IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 161 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

GANPATBHAI BAGHARBHAI VAGHRI

Appearance:

1. Special Civil Application No. 161 of 2003

MR ASHISH M DAGLI for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/04/2003

ORAL JUDGEMENT

#. Heard learned advocate Mr.A.M.Dagali appearing on behalf of the petitioner and learned advocate Mr.J.S.Brambhatt on behalf of the respondent - workman.

#. In the present petition, the petitioner Corporation has challenged the award passed by the Labour Court, Baroda in Reference No.648 / 1999 dated 24th April, 2002, wherein the labour court has set aside the termination order and granted reinstatement with 50 % backwages of the interim period and continuity of service and also imposed punishment of stoppage of one increment without cumulative effect. Learned advocate Mr.Dagali for the petitioner Corporation has submitted that defence of the workman that his bus was local and the stands come at usual small intervals and there was frequent flow of passengers stepping in and out of the bus at the stops and therefore, he was continously busy with the road booking but it was not to be correct considering the record of the departmental inquiry. He also submitted that the workman who remained present in the departmental inquiry and this fact is transparent from page.27 of this petition. He also drawn the attention of this Court to the discussion made by the labour court concerned at page.28 middle and onwards and pointed that out of 38 passengers, four passengers remained without tickets. He also submitted that after seeing the checking staff, hurriedly these tickets were issued by the workman conductor and therefore, the said eight tickets were not properly punched which issued by the conductor and therefore the defence which was taken by the workman cannot be accepted. He also submitted that way bill was not produced by the Corporation before the labour court but looking to the papers of the departmental inquiry, it was found that the way bill was not closed. He also raised the contention that the Reference in question was made after two years as the date of dismissal is 15th October, 1997. He also submitted that the labour court has committed gross error in granting 50 % backwages to the workman. However, no any other documents shown to this Court and except the submissions referred to above, no other submission is made by the learned advocate Mr.Dagali while defending the case of the petitioner corporation.

#. Learned advocate Mr.J.S.Brambhatt appearing on behalf of the respondent workman has submitted that when the respondent workman was on route on 6th May, 1997 from Padara to Bhanpur, meanwhile, his bus was checked at Sanpur and the allegation made against the respondent workman that at that time, the respondent workman had recovered a fare of Rs.12/- [Rs.1/- for each ticket] from twelve passengers of one group but on seeing the checking staff, hurriedly issued eight tickets not properly punched to the eight passengers instead of

twelve tickets and that is how wrong punch made on eight tickets. Learned advocate Mr.Brambhatt submitted that on the basis of the allegations, chargesheet was served to the respondent workman and thereafter, the departmental inquiry was initiated and ultimately the respondent workman was dismissed from service on 15th October, 1997. He also submitted that after dismissal order, there are two stages of appeals available to the workman and therefore the workman respondent herein has availed the remedy of appeal which has caused delay for about two years in rasing the dispute as the workman was awaiting the result of the said departmental appeals. Learned advocate Mr.Brambhatt has submitted that before the labour court, the workman had not challenged the legality and validity of the departmental inquiry but challenge was confined to finding given by the competent authority. He also submitted that the respondent workman has rendered service of more than 25 years when the incident occurred and he remained unemployed during the interim period as per the oral evidence. He also submitted that the labour court has rightly come to the conclusion that after appreciating the record of the inquiry papers and in absence of the way bill, the respondent workman was doing road booking when the bus was checked at that time remaining tickets were not issued as the Checking Inspector had not allowed to issue said tickets and therefore, there was no bad intention on the part of the respondent workman having not issuing said four tickets to the remaining four passengers. The Labour Court has rightly considered this aspect in detail and come to the conclusion that at the most it amounts to negligence on the part of the workman and that is how the labour court has imposed punishment of stoppage of one increment without non cumulative effect and also denied backwages of 50 % for interim period. It is also submitted that there is no bad past record of the workman concerned during the tenure of 25 years of his service with the petitioner. This aspect has also been considered by the labour court and according to him, the labour court has not committed any error while passing the award impugned in this petition and rightly granted backwages to the tune of 50 % of the interim period.

#. I have considered submissions of the leaned advocate for the respective parties. The Labour Court has appreciated the evidence led in the departmental inquiry and the labour court has given its reasoning in para-10 of the award. The labour court has in detail examined the submissions of the parties as well as relevant clauses of the S.T Procedure, so also, considered the entire allegations with the facts and circumstances of

the case. The labour court has considered that the workman respondent herein has rendered 25 years of service and the fact that the workman has not bad past record. The labour court has also considered that during the interim period, the workman has remained unemployed and the fact that the other side has not proved gainful employment of the workman concerned. The labour court has also appreciated the fact that when the delinquent workman was busy with the road booking and when he issued tickets to the eight passengers out of twelve passengers of one group, how and as to why, he would not have issued to said remaining four persons who had just boarded in the Bus from Motabhagol. It is also appreciated that when the checking was conducted, the bus was proceeding on rural roads leading from Padara to Bhanpur and there comes in all eleven stops in between the last destination and the bus was checked within two to three kilometer distance from the starting point and the workman respondent herein had already issued to the passengers who boarded in the bus from earlier stand who stepped down on next destination. The labour court has also appreciated one important aspect that at the time of checking, there were in all 38 passengers in the bus and only four persons were yet to be issued the tickets of Rs.1/- each totalling to Rs.4/- but no sooner the inspection of checking staff started, the respondent workman could not issue tickets to these four persons which is proved from the evidence on record before the labour court concerned. Therefore, the labour court has come to the conclusion that in short distance journey on local road, when the four passengers found without ticket of Rs.1/- each in short distance from boarding in the bus, it cannot be presumed any malafide intention of misappropriation of the revenue of the Corporation on the part of the respondent workman. The labour court has also rightly appreciated that when the way bill was open and not closed meaning thereby, the workman was in the midst of road booking while issuing the tickets and he was about to issue the tickets to said four passengers and at that time, the bus was checked and thus, the labour court has on reappropriation of the evidence on record, concluded that looking to the evidence the finding of the competent authority is contrary to the record and the charge levelled against the workman is not proved. The labour court has also come to the conclusion that the charge under Section 7-A and 12-B also not stand to have proved against the respondent workman looking to the evidence led in the departmental inquiry but only charge was proved to the effect that the concerned workman had not issued said four tickets of Rs.1/- each to said four passengers in time and therefore, the charge

of dishonesty and misappropriation is not found to have proved and ultimately, considering the unemployment of the respondent workman, the labour court has exercised the powers under Section 11-A of the Act and set aside the termination order and granted reinstatement with continuity of service with 50 % backwages of the interim period and all consequential benefits and for the charge of not issuing the tickets in time to said four passenger, the labour court has imposed punishment of stoppage of one increment without cumulative effect. According to my opinion, the labour court has rightly appreciated the evidence which was led in the departmental inquiry and this Court can not reappreciate the same evidence while exercising the powers under Article 226 and 227 of the Constitution of India. The labour court has given cogent reason in support of its conclusion and there is no infirmity apparent on the face of the record pointed out by the learned advocate Mr.Dagali. As such, there is no procedural irregularity committed by the labour court. It may also be appreciated that this Court having very limited jurisdiction to interfere with the award passed by the labour court or the tribunal. Even two views are possible, this Court cannot interfere with such finding.

#. Recently, the Apex Court has examined this question in reported decision in the case of ESSEN DEINKI V. RAJIV KUMAR, 2003 SC Labour & Service page 13. Relevant paragraphs are as under:

> 2. Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.
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> 3. The observations above, however, find affirmance in the decision of this Court in Nibaran Chandra Bag V. Mahendra Nath Ghughu. In

Nibaran this Court has been rather categorical in recording that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. More recently, in Mani Nariman Daruwala Vs. Phiroz N.Bhatena this Court in a similar vein stated: (SCC pp. 149-50, para 18)

"In the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the court or tribunal who (sic) has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact."

4. Needless to record that there is total unanimity of judicial precedents on the score that error must be that of law and patently on record committed by the interior tribunal so as to warrant intervention - it ought not to act as a court of appeal and there is no dissension or even a contra-note being sounded at any point of time till date. Incidentally, the illegality, if there be any, in an order of an inferior tribunal, it would however be a plain exercise of jurisdiction under the article to correct the same as otherwise the law courts would fail to subserve the needs of the society since illegality cannot even be countenanced under any circumstances.

5. In this context reference may also be made to a still later decision of this Court in the case of Savita Chemicals (P) Ltd. Vs. Dyes & chemical Workers' Union wherein this Court in para 19 of the Report observed: (SCC p. 166)

"Under Article 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law."

#. In view of above observations and discussion, according to my opinion, the labour court has not committed any error while passing the award in question. Even otherwise, learned advocate Mr.Dagali has failed to point out any other infirmity apparent on the face of the record and therefore, considering the limited powers of this Court as held by the Apex Court in the decision referred to above, there is no substance in the present petition and the same does not deserve to be entertained.

#. For the reasons stated above and discussion, present petition is not entertained and the same is rejected at accordingly.

No order as to costs.

Direct Service permitted to the respondent.

Date : 24-4-2003 [H.K.Rathod, J.]

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